IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV. APPLICATION NO.323 OF 2005

M/s.Prakash Fertilizers .. Applicant
Versus
Laxmi Krushi Seva Kendra & Anr. .. Respondents

Mr.C.G.Gavnekar for applicant
Mr.Mahendra Sadhyanshiv for respondent No.1.
Mr.Mahesh More, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 23rd November 2006.
P.C.

. Heard. Rule. By consent rule made returnable forthwith.

2. Petitioner who is original complainant has a grievance that the complaint instituted by him alleging offence under Section 138 of the Negotiable Instruments Act read with section 406 and 420 of I.P.C. has been dismissed for default for non appearance of complainant on 8th July

2005.

3. Petitioner does not dispute that the complainant failed to appear on some occasions before the trial court. An accommodation was sought but he could not remain present. His Advocate was also unable to attend the Court on the concerned date.

4. Learned Advocate has invited my attention to the fact that an application for discharge was preferred by respondent No.1- accused, (Exh.20). Complainant as also his Advocate were under a bonafide belief that the discharge application would be decided before any further proceedings are taken in the complaint. It is on account of this genuine and bonafide belief that the complainant remained absent. There is no question of any dilatory tactics being adopted as the complainant is interested in early disposal of the complaint.

5. There is no affidavit in reply filed. In such circumstances, in my view, interest of justice would be sub-served if this Court exercise its inherent powers and restores the complaint to the file of Judicial Magistrate, F.C. Malegaon, Dist.Nashik. In the result, the impugned order is quashed and set aside. Complaint No.352 of 2001 is restored to the file for disposal on merits and in accordance with law. Needless to state that this order does not prevent the trial court from passing appropriate orders on the pending discharge application. To further sub-serve the interest of justice, it is directed that the application for discharge (Exh.20) be decided within a period of eight weeks from the date of receipt of a copy of this order. Rule is made absolute accordingly. All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)